

Adopted	Rejected
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COMMITTEE REPORT

YES:	8
NO:	0

MR. SPEAKER:

*Your Committee on Labor and Employment, to which was referred Senate Bill 432, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, delete everything after the enacting clause and insert the
- 2 following:
- 3 SECTION 1. IC 20-8.1-4-20 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 20. (a) This section
- 5 applies only to occupations for which a child who is fourteen (14) years
- 6 of age or older and less than eighteen (18) years of age must obtain an
- 7 employment certificate under this chapter.
- 8 **(b) As used in this section, "nonschool week" refers to a week in**
- 9 **which school is not in session on any day.**
- 10 ~~(b)~~ (c) The following apply only to a child who is **at least** fourteen
- 11 (14) years of age ~~or older~~ and less than sixteen (16) years of age:
- 12 (1) The child may not work before 7:00 a.m. or after 7:00 p.m.
- 13 However, the child may work until 9:00 p.m. ~~from June 1 through~~
- 14 **Labor Day: during a nonschool week.**

- 1 (2) The child may not work:
- 2 (A) more than three (3) hours on a school day;
- 3 (B) more than eighteen (18) hours in a school week;
- 4 (C) more than eight (8) hours on a nonschool day; or
- 5 (D) more than forty (40) hours in a nonschool week.
- 6 ~~(c)~~ **(d)** A child who is at least sixteen (16) years of age and less than
- 7 ~~eighteen (18)~~ **seventeen (17)** years of age may not: ~~work:~~
- 8 (1) **work** for more than eight (8) hours in any one (1) day;
- 9 (2) **work** for more than ~~forty (40)~~ **thirty (30)** hours in any one (1)
- 10 week;
- 11 (3) **work** for more than six (6) days in any one (1) week; or
- 12 (4) **begin a work day** before 6:00 a.m.
- 13 **(e) A child who is at least seventeen (17) years of age and less**
- 14 **than eighteen (18) years of age may not:**
- 15 (1) **work for more than eight (8) hours in any one (1) day;**
- 16 (2) **work for more than thirty (30) hours in any one (1) week;**
- 17 (3) **work for more than six (6) days in any one (1) week; or**
- 18 (4) **begin a work day before 6:00 a.m. on a school day.**
- 19 ~~(d)~~ **(f)** A child who is at least sixteen (16) years of age and less than
- 20 ~~seventeen (17)~~ **eighteen (18)** years of age may work until 10:00 p.m.
- 21 on nights that are followed by a school day in any occupation except
- 22 those which the commissioner of labor determines to be dangerous to
- 23 life or limb or injurious to health or morals.
- 24 ~~(e)~~ **(g)** An employer may employ a child who is at least sixteen (16)
- 25 years of age and less than seventeen (17) years of age to work until
- 26 midnight if:
- 27 (1) the work will be performed:
- 28 (A) ~~while schools are closed for summer vacation;~~ **during a**
- 29 **nonschool week;** or
- 30 (B) on days that are not followed by a school day; and
- 31 (2) the employer has:
- 32 (A) obtained written permission from a child's parent **or legal**
- 33 **guardian;** and
- 34 (B) placed the written permission on file in the employer's
- 35 office.
- 36 **(h) An employer may employ a child who is at least sixteen (16)**
- 37 **years of age and less than eighteen (18) years of age up to forty (40)**
- 38 **hours during a school week if the employer has:**

1 **(1) obtained written permission from a child's parent or legal**
 2 **guardian; and**

3 **(2) placed the written permission on file in the employer's**
 4 **office.**

5 ~~(f)~~ **(i)** If an employer has obtained written permission required under
 6 subsection ~~(e)~~, **(h)**, the employer may employ a child who is at least
 7 sixteen (16) years of age but less than eighteen (18) years of age for
 8 periods that do not exceed a total of nine (9) hours in any one (1) day
 9 and a total of forty-eight (48) hours in any one (1) **nonschool** week.
 10 ~~during summer vacation from school.~~

11 ~~(g)~~ **(j)** A child who is

12 ~~(f)~~ **(h)** seventeen (17) years of age or older but less than eighteen (18)
 13 years of age **and**

14 ~~(2)~~ **a student in grades 9 through 12;**

15 may work until 11:30 p.m. on nights that are followed by a school day
 16 **if the employer has obtained written permission from the child's**
 17 **parent or legal guardian and placed the permission on file in the**
 18 **employer's office.** A child covered by this subsection may work ~~later~~
 19 ~~than 11:30 p.m. on nights followed by a school day~~ **until 1 a.m. the**
 20 **following day** if the employer has obtained written permission from
 21 the child's parent **or legal guardian** and placed the permission on file
 22 in the employer's office. However, the nights followed by a school day
 23 on which a child works ~~later than 11:30 p.m. until 1 a.m. the following~~
 24 **day** may not be consecutive and may not exceed two (2) nights per
 25 week.

26 ~~(h)~~ **(k)** Children who are sixteen (16) years of age or older and less
 27 than eighteen (18) years of age may be employed the same daily and
 28 weekly hours and at the same times of day as adults if they fit into any
 29 one (1) of the following categories:

30 (1) They are a high school graduate.

31 (2) They have completed an approved vocational or special
 32 education program.

33 (3) They are not enrolled in a regular school term.

34 SECTION 2. IC 20-8.1-4-23 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 23. (a) Every person,
 36 firm, corporation, or company which employs any child who is fourteen
 37 (14) years of age or older and less than eighteen (18) years of age in an
 38 occupation for which the child must obtain an employment certificate

shall post and keep posted, in a conspicuous place or in places where notices to employees are customarily posted, a printed notice. This notice shall state:

- (1) the maximum number of hours these children may be employed or permitted to work in each day of the week; **and**
- (2) the hours of beginning and ending each day. **and**
- ~~(3) the names and ages of the children employed there.~~

The printed forms for this notice shall be furnished by the department of labor.

(b) The employment of children for a longer time on any day than is stated in the notice is a violation of this chapter.

SECTION 3. IC 20-8.1-4-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 31. (a) A person, firm, limited liability company, or corporation that violates this chapter may be assessed the following civil penalties by the department of labor:

(1) For an employment certificate violation under section 1 or 13 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) ~~Twenty-five~~ **Fifty** dollars ~~(\$25)~~ **(\$50)** per instance for ~~each~~ **a second** violation identified in a subsequent inspection.

(C) ~~One hundred~~ **Seventy-five** dollars ~~(\$100)~~ **(\$75)** per instance for ~~subsequent violations~~ **a third violation** that ~~(i) are~~ **is** identified in ~~an~~ **a** subsequent inspection. ~~subsequent to the inspection under clause (B); and~~

~~(ii) occur not more than two (2) years after a prior violation.~~

(D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(2) For a posting violation under section 23 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) ~~Twenty-five~~ **Fifty** dollars ~~(\$25)~~ **(\$50)** per instance for each violation identified in a subsequent inspection.

- 1 (C) ~~Twenty-five~~ **Seventy-five** dollars ~~(\$25)~~ **(\$75)** per instance
 2 for ~~subsequent violations~~ **a third violation** that
 3 (i) ~~are~~ **is** identified in ~~an~~ **a** ~~subsequent~~ inspection.
 4 ~~subsequent to the inspection under clause (B); and~~
 5 (ii) ~~occur not more than two (2) years after a prior violation.~~
 6 **(D) One hundred dollars (\$100) per instance for a fourth**
 7 **or subsequent violation that:**
 8 (i) **is identified in an inspection subsequent to the**
 9 **inspection under clause (C); and**
 10 (ii) **occurs not more than two (2) years after a prior**
 11 **violation.**
- 12 (3) For a termination notice violation under section 11 of this
 13 chapter, the following:
 14 (A) A warning letter for any violations identified during an
 15 initial inspection.
 16 (B) ~~Twenty-five~~ **Fifty** dollars ~~(\$25)~~ **(\$50)** per instance for each
 17 violation identified in a subsequent inspection.
 18 (C) ~~Fifty~~ **Seventy-five** dollars ~~(\$50)~~ **(\$75)** per instance for
 19 ~~subsequent violations~~ **a third violation** that
 20 (i) ~~are~~ **is** identified in ~~an~~ **a** ~~subsequent~~ inspection.
 21 ~~subsequent to the inspection under clause (B); and~~
 22 (ii) ~~occur not more than two (2) years after a prior violation.~~
 23 **(D) One hundred dollars (\$100) per instance for a fourth**
 24 **or subsequent violation that:**
 25 (i) **is identified in an inspection subsequent to the**
 26 **inspection under clause (C); and**
 27 (ii) **occurs not more than two (2) years after a prior**
 28 **violation.**
- 29 (4) For an hour violation of not more than thirty (30) minutes
 30 under section 20 of this chapter, the following:
 31 (A) A warning letter for any violations identified during an
 32 initial inspection.
 33 (B) ~~Twenty-five~~ **Fifty** dollars ~~(\$25)~~ **(\$50)** per instance for each
 34 violation identified in a subsequent inspection.
 35 (C) ~~Twenty-five~~ **Seventy-five** dollars ~~(\$25)~~ **(\$75)** per instance
 36 for ~~subsequent violations~~ **a third violation** that
 37 (i) ~~are~~ **is** identified in ~~an~~ **a** ~~subsequent~~ inspection.
 38 ~~subsequent to the inspection under clause (B); and~~

1 ~~(ii) occur not more than two (2) years after a prior violation.~~

2 **(D) One hundred dollars (\$100) per instance for a fourth**
 3 **or subsequent violation that:**

4 **(i) is identified in an inspection subsequent to the**
 5 **inspection under clause (C); and**

6 **(ii) occurs not more than two (2) years after a prior**
 7 **violation.**

8 (5) For an hour violation of more than (30) minutes under section
 9 20 of this chapter, the following:

10 (A) A warning letter for any violations identified during an
 11 initial inspection.

12 (B) ~~Fifty~~ **One hundred** dollars ~~(\$50)~~ **(\$100)** per instance for
 13 each violation identified in a subsequent inspection.

14 (C) ~~Seventy-five~~ **Two hundred** dollars ~~(\$75)~~ **(\$200)** per
 15 instance for ~~subsequent violations~~ **a third violation** that

16 ~~(i) are~~ **is** identified in ~~an~~ **a** subsequent inspection.
 17 ~~subsequent to the inspection under clause (B); and~~

18 ~~(ii) occur not more than two (2) years after a prior violation.~~

19 **(D) Four hundred dollars (\$400) per instance for a fourth**
 20 **or subsequent violation that:**

21 **(i) is identified in an inspection subsequent to the**
 22 **inspection under clause (C); and**

23 **(ii) occurs not more than two (2) years after a prior**
 24 **violation.**

25 (6) For a hazardous occupation violation under section 25 of this
 26 chapter, the following:

27 (A) A warning letter for any violations identified during an
 28 initial inspection.

29 (B) One hundred dollars (\$100) per instance for each violation
 30 identified in a subsequent inspection.

31 (C) ~~One~~ **Two** hundred dollars ~~(\$100)~~ **(\$200)** per instance for
 32 ~~subsequent violations~~ **a third violation** that

33 ~~(i) are~~ **is** identified in ~~an~~ **a** subsequent inspection.
 34 ~~subsequent to the inspection under clause (B); and~~

35 ~~(ii) occur not more than two (2) years after a prior violation.~~

36 **(D) Four hundred dollars (\$400) per instance for a fourth**
 37 **or subsequent violation that:**

38 **(i) is identified in an inspection subsequent to the**

1 **inspection under clause (C); and**
 2 **(ii) occurs not more than two (2) years after a prior**
 3 **violation.**

4 (7) For an age violation under section 21 or 21.5 of this chapter,
 5 the following:

6 (A) A warning letter for any violations identified during an
 7 initial inspection.

8 (B) One hundred dollars (\$100) per instance for each violation
 9 identified in a subsequent inspection.

10 (C) ~~One~~ **Two** hundred dollars ~~(\$100)~~ **(\$200)** per instance for
 11 ~~subsequent violations~~ **a third violation** that

12 ~~(i) are~~ **is** identified in ~~an~~ **a** subsequent inspection.
 13 ~~subsequent to the inspection under clause (B); and~~

14 ~~(ii) occur not more than two (2) years after a prior violation.~~

15 **(D) Four hundred dollars (\$400) per instance for a fourth**
 16 **or subsequent violation that:**

17 **(i) is identified in an inspection subsequent to the**
 18 **inspection under clause (C); and**

19 **(ii) occurs not more than two (2) years after a prior**
 20 **violation.**

21 (8) For each minor employed in violation of section 21(b) of this
 22 chapter, the following:

23 (A) A warning letter for any violations identified during an
 24 initial inspection.

25 (B) One hundred dollars (\$100) per instance for each violation
 26 identified in a subsequent inspection.

27 (C) ~~One~~ **Two** hundred dollars ~~(\$100)~~ **(\$200)** per instance for
 28 ~~subsequent violations~~ **a third violation** that

29 ~~(i) are~~ **is** identified in ~~an~~ **a** subsequent inspection.
 30 ~~subsequent to the inspection under clause (B); and~~

31 ~~(ii) occur not more than two (2) years after a prior violation.~~

32 **(D) Four hundred dollars (\$400) per instance for a fourth**
 33 **or subsequent violation that:**

34 **(i) is identified in an inspection subsequent to the**
 35 **inspection under clause (C); and**

36 **(ii) occurs not more than two (2) years after a prior**
 37 **violation.**

38 (b) A civil penalty assessed under subsection (a):

(1) is subject to IC 4-21.5-3-6; and

(2) becomes effective without a proceeding under IC 4-21.5-3 unless a person requests an administrative review not later than thirty (30) days after notice of the assessment is given.

(c) For purposes of determining whether a second violation has occurred when assessing a civil penalty under subsection (a), a first violation expires one (1) year after the date of issuance of a warning letter by the department of labor under subsection (a).

(d) For purposes of determining recurring violations of this section, each location of an employer shall be considered separate and distinct from another location of the same employer.

(e) There is established an employment of youth fund for the purpose of educating affected parties on the purposes and contents of this chapter and the responsibilities of all parties under this chapter.

One-half (1/2) of the fund each year shall be used for the purpose of the education provision of this subsection. This portion of the fund may be used to award grants to provide educational programs. The remaining one-half (1/2) of the fund shall be used each year for the expenses of hiring and salaries of additional inspectors to enforce this chapter under section 29 of this chapter. All inspectors hired to enforce this chapter shall also be available to educate affected parties on the purposes and contents of this chapter and the responsibilities of all parties under this chapter.

The fund shall be administered by the department of labor. The expenses of administering the fund shall be paid from money in the fund. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of a state fiscal year does not revert to the state general fund. Revenue received from civil penalties under this section shall be deposited in the employment of youth fund.

SECTION 4. IC 22-2-2-4, AS AMENDED BY SEA 40-1999, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:
Sec. 4. (a) Every employer employing four (4) or more employees during a work week shall:

(1) in any work week beginning on or after July 1, 1968, in which he is subject to the provisions of this chapter, pay each of his

1 employees wages of not less than one dollar and twenty-five cents
2 (\$1.25) per hour;

3 (2) in any work week beginning on or after July 1, 1977, in which
4 he is subject to this chapter, pay each of his employees wages of
5 not less than one dollar and fifty cents (\$1.50) per hour;

6 (3) in any work week beginning on or after January 1, 1978, in
7 which he is subject to this chapter, pay each of his employees
8 wages of not less than one dollar and seventy-five cents (\$1.75)
9 per hour; and

10 (4) in any work week beginning on or after January 1, 1979, in
11 which he is subject to this chapter, pay each of his employees
12 wages of not less than two dollars (\$2) per hour.

13 (b) Except as provided in subsection (c), every employer employing
14 at least two (2) employees during a work week shall, in any work week
15 in which the employer is subject to this chapter, pay each of the
16 employees in any work week beginning on and after July 1, 1990, and
17 before October 1, 1998, wages of not less than three dollars and
18 thirty-five cents (\$3.35) per hour.

19 (c) An employer subject to subsection (b) is permitted to apply a "tip
20 credit" in determining the amount of cash wage paid to tipped
21 employees. In determining the wage an employer is required to pay a
22 tipped employee, the amount paid the employee by the employee's
23 employer shall be an amount equal to:

24 (1) the cash wage paid the employee which for purposes of the
25 determination shall be not less than the cash wage required to be
26 paid to employees covered under the federal Fair Labor Standards
27 Act of 1938, as amended (29 U.S.C. 203(m)(1)) on August 20,
28 1996, which amount is two dollars and thirteen cents (\$2.13) an
29 hour; and

30 (2) an additional amount on account of the tips received by the
31 employee, which amount is equal to the difference between the
32 wage specified in subdivision (1) and the wage in effect under
33 subsections (b), (f), and (g).

34 An employer is responsible for supporting the amount of tip credit
35 taken through reported tips by the employees.

36 (d) No employer having employees subject to any provisions of this
37 section shall discriminate, within any establishment in which
38 employees are employed, between employees on the basis of sex by

1 paying to employees in such establishment a rate less than the rate at
 2 which he pays wages to employees of the opposite sex in such
 3 establishment for equal work on jobs the performance of which
 4 requires equal skill, effort, and responsibility, and which are performed
 5 under similar working conditions, except where such payment is made
 6 pursuant to:

- 7 (1) a seniority system;
- 8 (2) a merit system;
- 9 (3) a system which measures earnings by quantity or quality of
 10 production; or
- 11 (4) a differential based on any other factor other than sex.

12 (e) An employer who is paying a wage rate differential in violation
 13 of subsection (d) shall not, in order to comply with subsection (d),
 14 reduce the wage rate of any employee, and no labor organization, or its
 15 agents, representing employees of an employer having employees
 16 subject to subsection (d) shall cause or attempt to cause such an
 17 employer to discriminate against an employee in violation of
 18 subsection (d).

19 (f) Except as provided in subsection (c), every employer employing
 20 at least two (2) employees during a work week shall, in any work week
 21 in which the employer is subject to this chapter, pay each of the
 22 employees in any work week beginning on or after October 1, 1998,
 23 and before March 1, 1999, wages of not less than four dollars and
 24 twenty-five cents (\$4.25) per hour.

25 (g) Except as provided in subsections (c) and (i), every employer
 26 employing at least two (2) employees during a work week shall, in any
 27 work week in which the employer is subject to this chapter, pay each
 28 of the employees in any work week beginning on or after March 1,
 29 1999, wages of not less than five dollars and fifteen cents (\$5.15) an
 30 hour.

31 (h) This section does not apply if an employee:

- 32 (1) provides companionship services to the aged and infirm (as
 33 defined in 29 CFR 552.6); and
- 34 (2) is employed by an employer or agency other than the family
 35 or household using the companionship services, as provided in 29
 36 CFR 552.109 (a).

37 (i) This subsection applies only to an employee who has not attained
 38 the age of twenty (20) years. Instead of the rates prescribed by

1 subsections (c), (f), and (g), an employer may pay an employee of the
2 employer, during the first ninety (90) consecutive calendar days after
3 the employee is initially employed by the employer, a wage which is
4 not less than four dollars and twenty-five cents (\$4.25) per hour,
5 effective March 1, 1999. However, no employer may take any action
6 to displace employees (including partial displacements such as
7 reduction in hours, wages, or employment benefits) for purposes of
8 hiring individuals at the wage authorized in this subsection.

9 (j) Except as otherwise provided in this section, no employer shall
10 employ any employee for a workweek longer than forty (40) hours
11 unless the employee receives compensation for employment in excess
12 of the hours above specified at a rate not less than one and one-half
13 (1.5) times the regular rate at which he is employed.

14 (k) For purposes of this section the following apply:

15 (1) "Overtime compensation" means the compensation required
16 by subsection (j).

17 (2) "Compensatory time" and "compensatory time off" mean
18 hours during which an employee is not working, which are not
19 counted as hours worked during the applicable workweek or other
20 work period for purposes of overtime compensation, and for
21 which the employee is compensated at the employee's regular
22 rate.

23 (3) "Regular rate" means the rate at which an employee is
24 employed is considered to include all remuneration for
25 employment paid to, or on behalf of, the employee, but is not
26 considered to include the following:

27 (A) Sums paid as gifts, payments in the nature of gifts made at
28 Christmas time or on other special occasions, as a reward for
29 service, the amounts of which are not measured by or
30 dependent on hours worked, production, or efficiency.

31 (B) Payments made for occasional periods when no work is
32 performed due to vacation, holiday, illness, failure of the
33 employer to provide sufficient work, or other similar cause,
34 reasonable payments for traveling expenses, or other expenses,
35 incurred by an employee in the furtherance of his employer's
36 interests and properly reimbursable by the employer, and other
37 similar payments to an employee which are not made as
38 compensation for his hours of employment.

1 (C) Sums paid in recognition of services performed during a
2 given period if:

3 (i) both the fact that payment is to be made and the amount
4 of the payment are determined at the sole discretion of the
5 employer at or near the end of the period and not pursuant
6 to any prior contract, agreement, or promise causing the
7 employee to expect the payments regularly;

8 (ii) the payments are made pursuant to a bona fide profit
9 sharing plan or trust or bona fide thrift or savings plan,
10 meeting the requirements of the administrator set forth in
11 appropriately issued regulations, having due regard among
12 other relevant factors, to the extent to which the amounts
13 paid to the employee are determined without regard to hours
14 of work, production, or efficiency; or

15 (iii) the payments are talent fees paid to performers,
16 including announcers, on radio and television programs.

17 (D) Contributions irrevocably made by an employer to a
18 trustee or third person pursuant to a bona fide plan for
19 providing old age, retirement, life, accident, or health
20 insurance or similar benefits for employees.

21 (E) Extra compensation provided by a premium rate paid for
22 certain hours worked by the employee in any day or workweek
23 because those hours are hours worked in excess of eight (8) in
24 a day or in excess of the maximum workweek applicable to the
25 employee under subsection (h) or in excess of the employee's
26 normal working hours or regular working hours, as the case
27 may be.

28 (F) Extra compensation provided by a premium rate paid for
29 work by the employee on Saturdays, Sundays, holidays, or
30 regular days of rest, or on the sixth or seventh day of the
31 workweek, where the premium rate is not less than one and
32 one-half (1.5) times the rate established in good faith for like
33 work performed in nonovertime hours on other days.

34 (G) Extra compensation provided by a premium rate paid to
35 the employee, in pursuance of an applicable employment
36 contract or collective bargaining agreement, for work outside
37 of the hours established in good faith by the contract or
38 agreement as the basic, normal, or regular workday (not

1 exceeding eight hours) or workweek (not exceeding the
2 maximum workweek applicable to the employee under
3 subsection (a)) where the premium rate is not less than one
4 and one-half (1.5) times the rate established in good faith by
5 the contract or agreement for like work performed during the
6 workday or workweek.

7 (l) No employer shall be considered to have violated subsection (j)
8 by employing any employee for a workweek in excess of that specified
9 in subsection (a) without paying the compensation for overtime
10 employment prescribed therein if the employee is so employed:

11 (1) in pursuance of an agreement, made as a result of collective
12 bargaining by representatives of employees certified as bona fide
13 by the National Labor Relations Board, which provides that no
14 employee shall be employed more than one thousand forty (1,040)
15 hours during any period of twenty-six (26) consecutive weeks; or
16 (2) in pursuance of an agreement, made as a result of collective
17 bargaining by representatives of employees certified as bona fide
18 by the National Labor Relations Board, which provides that
19 during a specified period of fifty-two (52) consecutive weeks the
20 employee shall be employed not more than two thousand two
21 hundred forty (2,240) hours and shall be guaranteed not less than
22 one thousand eight hundred forty (1,840) hours (or not less than
23 forty-six (46) weeks at the normal number of hours worked per
24 week, but not less than thirty (30) hours per week) and not more
25 than two thousand eighty (2,080) hours of employment for which
26 the employee shall receive compensation for all hours guaranteed
27 or worked at rates not less than those applicable under the
28 agreement to the work performed and for all hours in excess of
29 the guaranty which are also in excess of the maximum workweek
30 applicable to the employee under subsection (a) or two thousand
31 eighty (2,080) in that period at rates not less than one and
32 one-half (1.5) times the regular rate at which the employee is
33 employed. or

34 (m) No employer shall be considered to have violated subsection (j)
35 by employing any employee for a workweek in excess of the maximum
36 workweek applicable to the employee under subsection (a) if the
37 employee is employed pursuant to a bona fide individual contract, or
38 pursuant to an agreement made as a result of collective bargaining by

representatives of employees, if the duties of the employee necessitate irregular hours of work, and the contract or agreement includes the following:

(1) Specifies a regular rate of pay of not less than the minimum hourly rate provided in subsections (c), (f), (g), and (i) (whichever is applicable) and compensation at not less than one and one-half (1.5) times that rate for all hours worked in excess of the maximum workweek.

(2) Provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

(n) No employer shall be considered to have violated subsection (j) by employing any employee for a workweek in excess of the maximum workweek applicable to the employee under that subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in the workweek in excess of the maximum workweek applicable to the employee under that subsection:

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half (1.5) times the bona fide piece rates; applicable to the same work when performed during nonovertime hours; ~~or~~

(2) in the case of an employee performing two (2) or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half (1.5) times those bona fide rates; applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half (1.5) times the rate established by the agreement or understanding as the basic rate to be used in computing overtime compensation thereunder, provided that the rate so established shall be substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if the employee's average hourly earnings for the workweek exclusive of payments described in this section are not less than the minimum hourly rate required by applicable law, and extra overtime compensation is properly computed and paid on other forms of

1 additional pay required to be included in computing the regular rate.

2 (o) Extra compensation paid as described in this section shall be
3 creditable toward overtime compensation payable pursuant to this
4 section.

5 (p) No employer shall be considered to have violated subsection (j)
6 by employing any employee of a retail or service establishment for a
7 workweek in excess of the applicable workweek specified therein, if:

8 (1) the regular rate of pay of the employee is in excess of one and
9 one-half (1.5) times the minimum hourly rate applicable to the
10 employee under section 2 of this chapter; and

11 (2) more than half of the employee's compensation for a
12 representative period (not less than one (1) month) represents
13 commissions on goods or services.

14 In determining the proportion of compensation representing
15 commissions, all earnings resulting from the application of a bona fide
16 commission rate shall be considered commissions on goods or services
17 without regard to whether the computed commissions exceed the draw
18 or guarantee.

19 (q) No employer engaged in the operation of a hospital or an
20 establishment which is an institution primarily engaged in the care of
21 the sick, the aged, or the mentally ill or defective who reside on the
22 premises shall be considered to have violated subsection (j) if, pursuant
23 to an agreement or understanding arrived at between the employer and
24 the employee before performance of the work, a work period of
25 fourteen (14) consecutive days is accepted in lieu of the workweek of
26 seven (7) consecutive days for purposes of overtime computation and
27 if, for his employment in excess of eight (8) hours in any workday and
28 in excess of eighty (80) hours in that fourteen (14) day period, the
29 employee receives compensation at a rate not less than one and
30 one-half (1.5) times the regular rate at which the employee is
31 employed.

32 (r) No employer shall employ any employee in domestic service in
33 one (1) or more households for a workweek longer than forty (40)
34 hours unless the employee receives compensation for that employment
35 in accordance with subsection (j).

36 (s) In the case of an employee of an employer engaged in the
37 business of operating a street, suburban or interurban electric railway,
38 or local trolley or motorbus carrier (regardless of whether or not the

1 railway or carrier is public or private or operated for profit or not for
 2 profit), in determining the hours of employment of such an employee
 3 to which the rate prescribed by subsection (j) applies there shall be
 4 excluded the hours the employee was employed in charter activities by
 5 the employer if both of the following apply:

6 (1) The employee's employment in the charter activities was
 7 pursuant to an agreement or understanding with the employer
 8 arrived at before engaging in that employment.

9 (2) If employment in the charter activities is not part of the
 10 employee's regular employment.

11 (t) Any employer may employ any employee for a period or periods
 12 of not more than ten (10) hours in the aggregate in any workweek in
 13 excess of the maximum workweek specified in subsection (j) without
 14 paying the compensation for overtime employment prescribed in
 15 subsection (j), if during that period or periods the employee is receiving
 16 remedial education that:

17 (1) is provided to employees who lack a high school diploma or
 18 educational attainment at the eighth grade level;

19 (2) is designed to provide reading and other basic skills at an
 20 eighth grade level or below; and

21 (3) does not include job specific training.

22 (u) Subsection (j) does not apply to an employee of a motion picture
 23 theater.

24 **(v) Subsection (j) does not apply to an employee of a seasonal**
 25 **amusement or recreational establishment, an organized camp, or**
 26 **a religious or nonprofit educational conference center that is**
 27 **exempt under the federal Fair Labor Standards Act of 1938, as**
 28 **amended (29 U.S.C. 213).**

(Reference is to SB432 as reprinted February 17, 1999.)

and when so amended that said bill do pass.

Representative Liggett